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Attorneys for Defendant  
JON TOUGAS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH JAMES GREER,

Plaintiff,

v.

CITY OF HAYWARD, BAY AREA  
RAPID TRANSIT DISTRICT; and DOES  
1-50,

Defendants.

Case No.: 3:15-cv-02307-WHO

**DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTIONS IN LIMINE**

Hon. Judge William H. Orrick

Date: March 13, 2017

Time: 8:30 a.m.

Trial: April 10, 2017

**I. INTRODUCTION**

Defendant SERGEANT JON TOUGAS ("Defendant") files this opposition to Plaintiff JOSEPH JAMES GREER's ("Plaintiff") motions *in limine* ("MIL").

1     **II.     LEGAL ARGUMENT**

2             **A.     Plaintiff's MIL No. 1**

3             Plaintiff's MIL No. 1 seeks to bar Defendant from calling any expert besides Jared  
4     Zwickey. *NetAirus Technologies, LLC v. Apple, Inc.* 2013 WL 9570686 (2013) stands for the  
5     proposition that whether an opposing party can call, in their case in chief, the other party's  
6     testifying experts is left to the sound discretion of the court: there is no "... *per se* rule forbidding  
7     a party from calling an adversary's expert during his case-in-chief." *NetAirus Technologies, LLC*  
8     *v. Apple, Inc., supra*, at \*2 (citations and internal quotes omitted). "[C]ourts have repeatedly  
9     observed that once a party has given testimony through deposition or expert reports, those  
10    opinions do not 'belong' to one party or another, but rather are available for all parties to use at  
11    trial." *Id.* at \*3 (citations omitted) (internal quotes in the original) (see also: *Kerns v. Pro-Foam of*  
12    *South Alabama, Inc.*, 572 F.Supp.2d 1303, 1309 – 10 (S.D.Ala.2007).

13            Plaintiff cites to no authority to support his request, and provides no reason why he is  
14    entitled to such a ruling. Defendant requests the Court reject Plaintiff's MIL No. 1.

15            **B.     Plaintiff's MIL No. 2**

16            As to sub (a) of Plaintiff's Motion in Limine No. 2, Defendant does not object to a  
17    limiting instruction provided that Defendant be allowed to introduce such evidence as it is  
18    probative of Plaintiff's claimed psychiatric damages, which include, *inter alia*, a claim of post-  
19    traumatic stress disorder and other traumatic grief-related conditions. Whether Plaintiff disclosed  
20    the subject event to his retained psychiatric expert Dr. Tara Collins – in preparing his case for  
21    damages related to post-traumatic stress – also bears on Plaintiff's credibility.

22            As to sub (b) of Plaintiff's Motion in Limine 2, Defendant does not object to a limiting  
23    instruction provided that Defendant be allowed to present the complete version of the subject  
24    evidence as Defendant anticipates that Plaintiff will introduce it through testimony that the  
25    Decedent's prior gun-shot wound injury – which Decedent disclosed to Hayward officers as seen  
26    in the incident video – made Decedent more susceptible to injury. Evidence of the shooting event  
27    also bears on Plaintiff's personal claim for psychiatric / grief-related damages. Namely, Plaintiff  
28    was present for the shooting incident, drove his father to the hospital, and did not disclose the

1 subject event to Dr. Collins / did not report to anyone that he experienced any psychiatric trauma.  
2 The shooting incident is probative to damages and credibility.

3 As to sub (c) of Motion in Limine 2, Defendant objects in so far as the perception of the  
4 officer at the scene is his own, and informs the totality of the circumstances known to that officer.  
5 This is not an instance where officers are bringing up the gang affiliation issue after the fact.

6 Defendant requests the Court deny Plaintiff's MIL No. 2, or alternatively, allow  
7 Defendant to present evidence, cross examine, and elicit testimony concerning these items where  
8 they have probative force on issues of damages and credibility.

9 **C. Plaintiff's MIL No. 3**

10 Defendant does not object to No. 3 to the extent that Defendant be allowed to introduce  
11 evidence of Plaintiff's DUI arrest during examination of Plaintiff's retained psychiatric expert,  
12 Dr. Tara Collins, to whom Plaintiff disclosed the DUI incident. The issue has bearing on the  
13 severity of Plaintiff's claimed psychiatric damages.

14 Respectfully submitted,

15 Dated: March 6, 2017

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